

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of:	)	
	)	
The University of Bridgeport	)	<b>Docket No.</b>
126 Park Avenue	)	<b>TSCA-01-2009-0050</b>
Bridgeport, Connecticut	)	
	)	<b>CONSENT AGREEMENT</b>
Respondent	)	<b>AND FINAL ORDER</b>
	)	
Proceeding under Section 16(a)	)	
of the Toxic Substances Control	)	
Act, 15 U.S.C. § 2615(a).	)	

**CONSENT AGREEMENT**

1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and in accordance with 40 C.F.R. § 22.18 of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 ("Consolidated Rules of Practice").

**I. INTRODUCTION**

2. Complainant, the United States Environmental Protection Agency ("EPA"), Region 1, initiated this proceeding against Respondent, the University of Bridgeport ("UB"), by issuing an administrative complaint ("Complaint"), pursuant to Section 16 of TSCA, on August 26, 2009.

3. The complete factual and jurisdictional basis for proposing the assessment of civil penalties is set forth in the Complaint.

## **II. TERMS OF SETTLEMENT**

4. The provisions of this Consent Agreement and Final Order ("CAFO") shall apply to and be binding on Respondent, its officers, directors, successors and assigns.

5. Respondent agrees that EPA has jurisdiction over the subject matter alleged in the Complaint, and hereby waives any defenses it might have as to jurisdiction and venue.

6. Respondent acknowledges that it has been informed of its right to request a hearing in this proceeding and hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

7. Respondent hereby waives its right to appeal the Final Order accompanying this Consent Agreement.

8. Without admitting or denying the facts and violations alleged in the Complaint, Respondent consents to the terms and issuance of this CAFO, including the performance of the Supplemental Environmental Project ("SEP") described herein, and consents for the purposes of settlement to the payment of the civil penalty as set out in this CAFO.

9. Respondent certifies that it has accepted and will fully comply with the University of Bridgeport PCB Remediation Notification, dated November 14, 2008, and its Addendum, dated February 2, 2009, as approved by EPA with certain conditions on March 5, 2009 (collectively, the "PCB Cleanup Plan"). EPA's March 5, 2009 Approval is attached to this CAFO as Attachment #1. Within 60 days of completion of the cleanup activities described in the PCB Cleanup Plan, Respondent shall submit a final completion report to EPA, as required under Condition 19 of the PCB Cleanup Plan, certifying that the cleanup activities have been completed in accordance with the plan.

10. Respondent shall submit a remedial action plan ("RAP") to the Connecticut Department of Environmental Protection's ("CT DEP's") Underground Storage Program by no later than January 30, 2010 that addresses the closure of three former underground storage tanks ("USTs") located on Respondent's campus at Bodine Hall (Tank # B1), North/South Hall (Tank # A1), and the Cox Student Center (unregistered tank). In addition, Respondent shall:

- a. Address any comments to the RAP by CT DEP in writing within 30 days of its receipt of the comments; and
- b. Comply with all of the schedules and actions identified in the RAP once the plan is approved by CT DEP.

11. After consideration of the nature of the violations alleged in the Complaint, Respondent's agreement to perform the SEP, and other relevant factors, Complainant has determined that it is fair and proper that Respondent pays a civil penalty in the amount of \$12,900 in settlement of this matter.

Penalty Payment

12. Respondent shall pay the civil penalty set forth in this CAFO by no later than thirty (30) days after the effective date of this CAFO.

13. This CAFO shall be effective on the date it is filed with the Regional Hearing Clerk.

14. Respondent shall make the penalty payment by submitting a bank, cashier's or certified check, payable to the order of the "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077



St. Louis, MO 63197-9000

Respondent shall note the case name ("In the Matter of: The University of Bridgeport") and the docket number ("TSCA-01-2009-0050") of this action on the payment check and in an accompanying cover letter, and shall provide copies of each check and letter to:

Judy Lao-Ruiz  
Acting Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 (ORA18-1)  
Boston, MA 02109-3912

and:

William D. Chin  
Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 (OES04-4)  
Boston, MA 02109-3912

15. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on the civil penalty if it is not paid within 30 calendar days of the effective date of this CAFO. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees in accordance with 31 C.F.R. § 901.9(c). In addition, a penalty charge of six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due in

accordance with 31 C.F.R. § 901.9(d). Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day that payment is due.

Description of SEP

16. Respondent agrees to complete the following SEP, which the parties agree is intended to secure significant environmental protection and improvements.

a. Respondent shall conduct an inventory of all of the electrical transformers on its campus in Bridgeport, Connecticut. Respondent shall also conduct sampling for PCBs of all of its transformers with an unknown PCB concentration. All transformers determined to contain PCBs at a concentration equal to or greater than 50 parts per million ("ppm") shall be removed from service and either retrofilled or disposed. The SEP shall be completed no later than 36 months after the effective date of this CAFO, unless extended pursuant to Paragraph 28. The SEP is further described in the scope of work ("Scope of Work"), attached hereto as Attachment #2, and is incorporated herein by reference.

17. The total expenditure for the SEP shall be at least \$56,000. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Reports/Notices, described in Paragraphs 20-22 herein.

18. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

19. Respondent certifies that, as of the date of its execution of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement or grant or as injunctive relief in this or any other action. Respondent also certifies that it has not

received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

SEP Reports/Notices

20. Within 100 days of the effective date of this CAFO, Respondent shall submit a SEP Report to EPA that shall contain the following information:

- a. A copy of its transformer inventory and any analytical test results regarding PCB concentration (or other documentation) associated with each transformer;
- b. A copy of the removal/disposal/retrofill schedule for its transformers; and
- c. A certified statement that Respondent is in compliance with the registration, marking and inspection requirements of 40 C.F.R. Part 761 (the "PCB Regulations").

21. Within 36 months of the effective date of this CAFO, Respondent shall submit a notice in writing to EPA that it has completed the removal/disposal/retrofill activities associated with each transformer.

22. Within 30 days of the completion of the SEP, Respondent shall submit a SEP Completion Report to EPA that shall contain the following information:

- a. A detailed description of the SEP as implemented, including copies of any waste disposal manifests, bills of lading and analytical results regarding the transformers;
- b. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- c. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and



d. A brief description of the environmental and public health benefits resulting from implementation of the SEP.

23. Respondent agrees that failure to submit any of the SEP Reports/Notices required by this CAFO shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to Paragraph 29 herein.

24. Respondent shall submit, by first class mail or overnight delivery, the SEP Reports/Notices required by this CAFO to Marianne Milette, Toxics and Pesticides Technical Unit, U.S. EPA, Region 1, 5 Post Office Square - Suite 100 (Mail Code: OES05-4), Boston, MA 02109-3912. The date of submission of such required SEP Reports/Notices shall be deemed the date on which such information is postmarked by the U.S. Postal Service, or delivered to an overnight delivery carrier.

25. Respondent shall maintain legible copies of documentation of the relevant and pertinent supporting evidence for any and all SEP Reports/Notices submitted to EPA pursuant to this CAFO for five (5) years following such submission, and Respondent shall provide documentation to EPA within seven (7) days of a request for such information. In all documents or reports submitted to EPA pursuant to this CAFO, Respondent shall, by and through an authorized official, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

#### EPA Response to SEP Reports

26. Following receipt of any SEP Report required by this CAFO, EPA will do one of the following: (i) accept the SEP Report; or (ii) reject the SEP Report, notify Respondent, in writing, of deficiencies in the SEP Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies.

27. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach an agreement on the issues in dispute. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Respondent to the United States in accordance with Paragraph 29 below.

#### Force Majeure

28. If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify EPA in writing within ten (10) days of the delay or of the date that Respondent knew or should have known of the event by the exercise of due diligence, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the cause or causes of the delay, the measures taken and/or to be taken by



Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved and shall constitute a waiver of Respondent's right to request an extension of its obligation under this CAFO based on such incident. If the parties agree that the delay or anticipated delay has been or will be caused by circumstances beyond the control of Respondent or any entity controlled by Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of Respondent or an entity controlled by Respondent, EPA shall notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

#### Stipulated Penalties

29. In the event that Respondent fails to complete the cleanup activities in accordance with the PCB Cleanup Plan or comply with all of the conditions of the PCB Cleanup Plan (including, but not limited to, submitting a final completion report); fails to comply with any of the schedules and/or activities identified in the RAP and approved by CT DEP; or fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP, such as the filing of any SEP Report/Notice; and to the extent that the actual expenditures for the SEP do not equal or exceed the expected cost of the SEP, Respondent shall be liable for stipulated penalties in accordance with the provisions set forth below:

a. For the failure to comply with any condition of the PCB Cleanup Plan, Respondent shall pay a stipulated penalty to the United States in accordance with the following schedule: for the initial thirty days of violation, a \$200 penalty for each day until the condition is met; and for each subsequent day thereafter, an additional \$500 penalty for each day until the condition is met.

b. For the failure to comply with any schedule or action identified in the RAP as approved by CT DEP, Respondent shall pay a stipulated penalty to the United States in accordance with the following schedule: for the initial thirty days of violation, a \$100 penalty for each day until the condition is met; and for each subsequent day thereafter, an additional \$200 penalty for each day until the condition is met.

c. Except as provided by Subparagraph 29.d herein, if the SEP is not satisfactorily completed pursuant to the terms of this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$56,000 (in other words, 100 percent of the amount of money originally required to be spent on the SEP) plus interest accrued from the effective date of this CAFO.

d. If the SEP is not satisfactorily completed, but Respondent: (1) made good faith and timely efforts to complete the SEP; and (2) certifies, with supporting documentation, that it spent at least 90 percent of the amount of money originally required to be spent on the SEP (in other words, equal to or more than \$50,400), Respondent shall not be liable for any stipulated penalty.

e. If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money originally required to be spent for the SEP (in other words, less than

\$50,400), Respondent shall pay a stipulated penalty to the United States in the amount of one dollar for every dollar less than \$50,400 that Respondent actually spent for the SEP, plus interest accrued from the effective date of this CAFO.

f. For the failure to submit any SEP Report/Notice required by this CAFO, Respondent shall pay a stipulated penalty to the United States in accordance with the following schedule: for the initial thirty days after the report was originally due, a \$100 penalty for each day until the report is submitted; and for the thirty-first day after the report was originally due and for each subsequent day thereafter, an additional \$200 penalty for each day until the report is submitted.

30. The determination of whether the PCB Cleanup Plan, the RAP, the SEP, and/or a SEP Report/Notice has been satisfactorily completed or submitted shall be in the sole discretion of EPA.

31. Respondent shall pay stipulated penalties plus any interest thereon within fifteen (15) days of receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 14 herein. EPA may, in its sole discretion, elect not to seek stipulated penalties or to waive any portion of stipulated penalties that accrue pursuant to this CAFO.

#### Additional Provisions

32. The civil penalty, described in Paragraph 11 herein, and any stipulated penalties, interest, non-payment penalties, and/or other charges, shall represent penalties assessed by EPA and shall not be deductible for federal tax purposes.



33. Compliance with this CAFO, including payment of any penalties, interest, or other charges, shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and does not waive, suspend, or modify the responsibility of Respondent to comply with such laws and regulations.


34. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16 of TSCA for the specific violations alleged in this CAFO. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or, with respect to matters other than the allegations and violations alleged in the Complaint, violations of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any other applicable provision of law. Nor shall this CAFO be construed to, nor is it intended to operate in any way to, resolve any criminal liability or any other civil liability of Respondent.

35. Except as described in Paragraph 15 herein, each party shall bear its own costs and fees in this proceeding.

36. Each undersigned representative of a party to this CAFO certifies that she or he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to it.

THE UNDERSIGNED PARTY enters into this CAFO for In the Matter of: The University of Bridgeport, Docket No. TSCA-01-2009-0050.

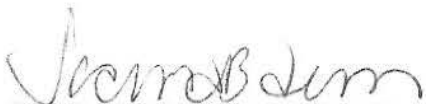
For the University of Bridgeport:

  
Name: George Estrada  
Title: VP Facilities  
The University of Bridgeport

12-4-09  
Date

THE UNDERSIGNED PARTY enters into this CAFO for In the Matter of: The University of Bridgeport, Docket No. TSCA-01-2009-0050

For U.S. EPA, Region 1:



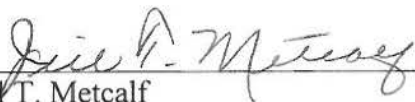
Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

12/16/09  
Date



### FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

  
\_\_\_\_\_  
Jill T. Metcalf

Acting Regional Judicial Officer  
U.S. EPA, Region 1

  
\_\_\_\_\_  
Date